Louisiana State Implementation Plan Revision

Revisions to the:
Prevention of Significant Deterioration
and
Title V Greenhouse Gas Tailoring Rule

Submitted to:

EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Final December 2011

DEQ
LOUISIANA

BOBBY JINDAL
GOVERNOR

PEGGY M. HATCH
SECRETARY

State of Louisiana

DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE SECRETARY

Dr. Al Armendariz, Administrator
US EPA, Region 6 (6-RA)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Re: State Implementation Plan (SIP) Revision
Part 70 Operating Permit Program Update

Dear Dr. Armendariz:

In accordance with the Clean Air Act Amendments of 1990, the state of Louisiana is pleased to provide the State Implementation Plan (SIP) Revision to the Part 70 Operating Permit Program.

On June 3, 2010, the Environmental Protection Agency (EPA) promulgated the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule."[1] This rule established a unique major source threshold and PSD significant emissions rate for the pollutant "greenhouse gases (GHGs)" and defined the terms under which GHGs would be "subject to regulation. The Louisiana Department of Environmental Quality (LDEQ) is submitting a Part 70 Operating Permit Program Update, namely the promulgation of the revisions to LAC 33:III.502 and LAC 33:III.509 necessitated by federal rule.

Should you have any questions concerning this matter or require additional documentation, please contact Bryan D. Johnston of the Air Permits Division at (225) 219-3450.

Sincerely,

Peggy M. Hatch
Secretary

December 21, 2011
Date

PMH:BDJ

[1] 75 FR 31514

EXECUTIVE SUMMARY

On June 3, 2010, the Environmental Protection Agency (EPA) promulgated the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule."[1] This rule established a unique major source threshold and PSD significant emissions rate for the pollutant "greenhouse gases (GHGs)" and defined the terms under which GHGs would be "subject to regulation. The Louisiana Department of Environmental Quality (LDEQ) is submitting a Part 70 Operating Permit Program Update, namely the promulgation of the revisions to LAC 33:III.502 and LAC 33:III.509 necessitated by federal rule.

Louisiana's GHG Tailoring Rule, identified as AQ314ft, was proposed in the *Louisiana Register* on October 20, 2010, and a public hearing was held on November 24, 2010. The proposed rule is included as Appendix A.

Public comments were received from EPA, the Louisiana Chemical Association, the Louisiana Mid-Continent Oil and Gas Association, the Air Permitting Forum, and the Sierra Club/Louisiana Bucket Brigade. A full summary of the comments along with a transcript of the hearing are included in the rule package in Appendix A. A copy of the summary response and concise statement is also included. In response to public comments, technical amendments were made to the rule. The list of amendments along with the final rule is included in Appendix B.

The Louisiana Environmental Quality Act, La.R.S.30.2001, et seq., (the Act) grants the secretary of the Department of Environmental Quality specific authority to adopt, amend, or repeal those rules and regulations that are deemed necessary for the protection of the state's environment. Further, the Act provides the secretary with the general power to assure compliance with applicable federal laws and regulations and to assume authority for those delegated programs that exist under the provision of the Clean Air Act Amendments. Furthermore, on February 22, 2010, Governor Bobby Jindal appointed Peggy M. Hatch, Secretary of the Louisiana Department of Environmental Quality as his designee to submit documents to the EPA for approval and incorporation into the State Implementation Plan for Louisiana.

[1] 75 FR 31514

Appendix A

Revisions to the:
Prevention of Significant Deterioration
and
Title V Greenhouse Gas Tailoring Rule

NOTICE OF INTENT

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs—Scholarship/Grant Programs—Applications, Federal Grant Aid and ACT Test (LAC 28:IV.505)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (LSA-R.S. 17:3021-3025, LSA-R.S. 3041.10-3041.15, LSA-R.S. 17:3042.1, LSA-R.S. 17:3048.1, LSA-R.S. 17:3048.5 and LSA-R.S. 17:3048.6).

This rulemaking revises the TOPS application deadline to allow payment of a TOPS Award beginning with the first semester, quarter or term of first-time, full-time enrollment for those students whose application for TOPS is received on or before July 1 (or no more than 120 days later with a reduction in award) immediately following the first anniversary of the student's high school graduation.

The full text of this Notice of Intent can be found in the Emergency Rule section of this *Louisiana Register.*

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Small Business Statement

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq. (SG11123NI)

Public Comments

Interested persons may submit written comments on the proposed changes (SG11123NI) until 4:30 p.m., November 9, 2010, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs
Scholarship/Grant Programs—Applications, Federal Grant Aid and ACT Test

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Currently, about 2% of 2010 Louisiana high school graduates eligible for a TOPS award for the 2010-2011 Academic Year did not file their TOPS application timely and would have had their first TOPS award payment delayed until the 2011-2012 Academic Year. Using 2009-2010 data, it is estimated that 287 of these students would accept a TOPS Opportunity Award or higher (academic award), and 64 students would accept a TOPS Tech award (technical award).

The payment delay that occurs under current rules does not reduce a student's total TOPS eligibility. The payment delay merely shifts the cost to the TOPS program to a later year. The rule change will shift costs from future years to earlier. As such, the proposed rules result in payment of approximately $1.1 million in TOPS awards in Fiscal Year 2010-11 that would have been paid in Fiscal Year 2011-12 based on current rules.

Under current rules, the total costs for the students whose payments are delayed until the 2011-2012 Academic year would be $5.4 million over four years based on the maximum 10 percent tuition increase per year authorized by the LA GRAD Act. The proposed rules move payments to prior years, resulting in a four year cost of $4.9 million, or a four year savings of approximately $0.5 million.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed change does not impact a student's TOPS eligibility, just the timing of TOPS award payments and thus the financial impact of receiving the award in the first year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Financial aid provided by TOPS makes it easier for students to seek post-secondary education. These changes eliminate the delay in payment of a TOPS award, easing any financial burden caused by the delay. Any increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge
General Counsel
1010#017

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary

Greenhouse Gas (GHG) Tailoring
(LAC 33:III.502 and 509)(AQ314ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.502.A and 509.B (AQ314ft).

This Rule is identical to federal regulations found in June 3, 2010, FR 75, Part 106, pages 31606-31607, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

On June 3, 2010, the Environmental Protection Agency (EPA) promulgated a Rule entitled "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (Tailoring Rule) (75 FR 31514). The final Rule establishes a separate major source threshold and Prevention of Significant Deterioration (PSD) significance level for greenhouse gases (GHGs) in the form of carbon dioxide equivalents (CO2e). This action will amend LAC 33:III.502.A and 509.B to adopt the federal thresholds.

On April 2, 2010, EPA published a final Rule entitled "Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs" (75 FR 17004). Under the terms of this action, GHGs become "subject to regulation" and Title V and PSD program requirements begin to apply on January 2, 2011.

LAC 33:III.509.B currently defines "major stationary source" and "significant," in relevant part, as follows:

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under this Section;

b. or stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under this Section;

***

Significant—

***

b. in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that Subparagraph a of this definition does not list, any emissions rate;

Consequently, in the absence of thresholds specifically tailored to GHGs, the Title V and PSD major source threshold would be 100 or 250 tons per year (depending on the source category), and any increase in GHG emissions resulting from a physical change or change in the method of operation at a major source would trigger PSD review.

According to the Tailoring Rule, this would greatly increase the number of required permits, impose undue costs on small sources, overwhelm the resources of permitting authorities, and severely impair the functioning of the programs (75 FR 31514). The basis and rationale for this Rule is to adopt the federal major stationary source threshold and PSD significance level for GHGs. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§502. Definitions

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

***

CO_2 Equivalent Emissions (CO_2e)—the emitted amount of *greenhouse gases (GHGs)* computed by multiplying the mass amount of emissions for each of the six *GHGs* by its associated global warming potential, published in Table A-1 to Subpart A of 40 CFR Part 98—Global Warming Potentials, and summing the resultant value for each (see *greenhouse gases (GHGs)*).

***

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Major Source—for the purposes of determining the applicability of 40 CFR Part 70 or of LAC 33:III.507, any stationary source or any group of stationary sources that are located on one or more contiguous or adjacent properties, that are under common control of the same person (or persons under common control), and that are described in Subparagraph a, b, c, or d of this definition:

a. - a.ii. ...

b. any stationary source that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant (except for GHGs) excluding any air pollutant regulated solely under Section 112(r) of the Clean Air Act. Fugitive emissions of a stationary source shall be considered in determining whether it is a major source under this Subparagraph:

i. - ii. ...

c. any major stationary source as defined in Part D (Nonattainment) of Title I of the Clean Air Act, including any source defined as a major stationary source under LAC 33:III.504.K;

d. as of July 1, 2011, any stationary source that directly emits or has the potential to emit 100,000 tpy CO_2e.

***

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 37:

§509. Prevention of Significant Deterioration

A. - A.5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

***

CO_2 Equivalent Emissions (CO_2e)—the emitted amount of greenhouse gases (GHGs) computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to Subpart A of 40 CFR, Part 98—Global Warming Potentials, and summing the resultant value for each.

***

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

***

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant (except for GHGs) subject to regulation under this Section;

b. for stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more

of any air pollutant (except for GHGs) subject to regulation under this Section;

c. as of July 1, 2011, any stationary source which emits, or has the potential to emit, at least 100,000 tons per year CO_2e; or

d. any physical change that would occur at a source not otherwise qualifying as a major stationary source under Subparagraphs a, b, or c of this definition if the change would constitute a major source by itself;

e. a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

f. the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a *major stationary source*, unless the source is listed in Table A of this definition or, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

* * *

Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics[1]	0.0000035 tpy
Municipal waste combustor metals[2]	15 tpy
Municipal waste combustor acid gases[3]	40 tpy
Municipal solid waste landfills emissions[4]	50 tpy
GHGs (as CO_2e)[5]	75,000 tpy
[1]Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.	
[2]Measured as particulate matter.	
[3]Measured as sulfur dioxide and hydrogen chloride.	
[4]Measured as nonmethane organic compounds.	
[5]Effective January 2, 2011.	

* * *

C. - AA.15.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:

Family Impact Statements

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ314ft. Such comments must be received no later than November 24, 2010, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to donald.trahan@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ314ft. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on November 24, 2010, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway

546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

1010#010

NOTICE OF INTENT

Office of the Governor
Board of Examiners of Certified Shorthand Court Reporters

General Requirements for Certified Shorthand Reporters
(LAC 46:XXI.101, 105, 317, 501, 511, 609, 901, 1103, and 1301)

In accordance with the Administrative Procedures Act, R. S. 49:950 et seq., notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters proposes to adopt and amend rules as required under ACT 700 of the 2010 Regular Legislative Session. The following rules will be adopted or amended: Certification, Grandfathering Certification, Examinations, Certificates, Methods of Reporting, Continuing Education, Fees, Court Reporting Procedures, and Code of Ethics.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXI. Certified Shorthand Reporters

Chapter 1. Certification

§101. Application for Certification

A. ...

B. An application for a certified digital reporter certificate will be processed according to the following procedure. The board staff will review each application for completeness and will notify the applicant in writing if the application is incomplete or inadequate. The board may request additional information from an applicant at any time during the application process. Each application must be accompanied by the fee to be paid upon issuance and renewal of a certificate as stated in Chapter 9 of these rules. A certified digital reporter certificate authorizes the certificate holder to practice court reporting only as an official or deputy official court reporter performing duties for a court of record. The holder of a CDR certificate is prohibited from engaging in freelance or general reporting. This certificate is only portable to another court if the applicant holds the Electronic Reporters and Transcribers certificate from the American Association of Electronic Reporters and Transcribers (AAERT) or any other national or state recognized association or organization which is approved by the board and authorized or licensed to provide education and certification for professionals engaged in digital reporting and transcribing a verbatim record of oral court proceedings, and which is approved by the judge or court employing the services of the court reporter, or any official or deputy official reporter who has satisfied equivalent testing and certification requirements established by the board. If the certificate is allowed to lapse, the seal(s) shall be returned to the board. Each holder of a CDR certificate is subject to the regulatory authority of the board and must satisfy the requirements applicable to court reporters, such as compliance with continuing education requirements, and adherence to the standards of professional conduct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 2556.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR16:393 (May 1990), LR 19:1537 (December 1993), LR 37:

§105. Grandfathering Certification

A. On or before December 31, 2010, the board will accept applications for the Certificate of Certified Digital Reporter from any person age 18 years or older who submits due proof that the person is employed as an official or deputy official court reporter by a Louisiana court of record and that the person has utilized electronic, audio, or digital recording equipment as a method of official court reporting. The board will accept as due proof of employment the board approved CDR application and judge or court affidavit. The affidavit shall be executed by the judicial administrator or judge of that court of record attesting, that the applicant is employed by that court as of the date of execution. The board will receive and consider applications for a CDR certificate based on grandfathering at any time on or before December 31, 2010. The board will not consider or approve applications for issuance of a CDR certificate by official or deputy official court reporters employed by the following courts: Fifteenth, Sixteenth, Seventeenth, Nineteenth, Thirty-Second, Thirty-Fourth, and Fortieth Judicial District Courts, the Orleans Parish Civil District Court, the Orleans Parish Criminal District Court, the Jefferson Parish First and Second Parish Courts, the New Orleans First and Second City Courts, the New Orleans Municipal and Traffic Courts, and on and after the effective date of its creation, the Forty-First Judicial District Court. Following submission of satisfactory proof in accordance with the foregoing requirements, the board will approve issuance of a CDR certificate.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554 and 2556.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 37:

Chapter 3. Examinations

§317. National Examinations

A. ...

B. The board will accept as an examination the Electronic Reporter and Transcriber certificate from the American Association of Electronic Reporters and Transcribers (AAERT). A certificate holder under this Chapter is prohibited from engaging in freelance or general reporting.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554 and 2556.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified

AGENDA FOR PUBLIC HEARING

Being Conducted by:

DEPARTMENT OF ENVIRONMENTAL QUALITY
REGULATION DEVELOPMENT SECTION

November 24, 2010

1:30 PM
Galvez Building, Oliver Pollock Room
602 N. Fifth
Baton Rouge, LA

SUSAN HAM - HEARING OFFICER

LOG #	RULE TITLE
AQ314ft	Greenhouse Gas (GHG) Tailoring Rule LAC 33:III.502.A & 509.B

COMMENT PERIOD ENDS **November 24, 2010** **AT 4:30 PM**

* *

DEPARTMENT OF ENVIRONMENTAL QUALITY
ATTENDANT SIGN-IN SHEET
Rulemaking Hearing, 1:30 p.m.
November 24, 2010

AQ314ft — Greenhouse Gas (GHG) Tailoring Rule

NAME	AFFILIATION	ADDRESS	CITY, STATE ZIP	PHONE	COMMENT (Y/N)
Brenda Hayden	DEQ				N
Richard Metcalf	LMOGA	730 N. Blvd	BR LA 70802	3873205	N
Henry Graham	LCA	One Amer Place FS	BR La 70825	3767662	Y
Nathan Mills	LDEQ				N
Deidra Johnson	LDEQ				N

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN RE:

GREENHOUSE GAS (GHG) TAILORING RULE

LOG #: AQ314ft

PUBLIC HEARING

The Public Hearing held by the Department of Environmental Quality, Regulation Development Section, at the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, Louisiana, beginning at 1:30 p.m., on November 24, 2010.

BEFORE:

Lori B. Overland
Certified Court Reporter
In and For the State of
Louisiana

A P P E A R A N C E S

FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

Deidra Johnson
Hearing Officer

Department of Environmental Quality
Legal Affairs Division, 8th Floor
Regulation Development
602 N. Fifth Street
Baton Rouge, Louisiana 70802

* * * * *

I N D E X

EXAMINATION:	PAGE(S):
None	
EXHIBITS:	
None	
REPORTER'S PAGE	10
REPORTER'S CERTIFICATE	11

* * * * *

* * * * *

MS. JOHNSON:

Good afternoon. My name is Deidra Johnson, and I'm employed by the Louisiana Department of Environmental Quality. I'll be serving as hearing officer this afternoon to receive comments regarding proposed amendments to the air regulations.

The comment period for these amendments began on October 20, 2010, when the notice of intent was published in the Louisiana Register. The comment period will close at 4:30 p.m., today, November 24, 2010. It would be helpful to us if all oral comments received today were followed up in writing.

This public hearing provides a forum for all interest parties to present comments on the proposed changes. This hearing is not being conducted in a question and answer format. Please remember that the purpose of this public hearing is to allow you, the public, an opportunity to express your thoughts

concerning today's proposed amendments.

I'll ask that each person commenting come up and sit at the front table and begin by stating his or her name and affiliation for the record.

The Air amendment is designated by the Log Number AQ314ft.

On June 3, 2010, the Environmental Protection Agency (EPA) promulgated a rule entitled "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (Tailoring Rule) (75 FR 31514). The final rule establishes a separate major source threshold and Prevention of Significant Deterioration (PSD) significance level for greenhouse gases (GHGs) in the form of carbon dioxide equivalents (CO2e.) This action will amend LAC 33:III.502.A and 509.B to adopt the federal thresholds.

On April 2, 2010, EPA published a final rule entitled "Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs" (75 FR 17004).

Under the terms of this action, GHGs become "subject to regulation" and Title V and PSD program requirements begin to apply on January 2, 2011.

LAC 33:III.509B currently defines "major stationary source" and "significant," in relevant part, as follows:

Major Stationary Source -

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under this Section;

b. or stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under this Section;

Significant -

b. in reference to a net emissions increase or the potential of a source to

emit a regulated NSR pollutant that Subparagraph a of this definition does not list, any emissions rate;

Consequently, in the absence of thresholds specifically tailored to GHGs, the Title V and PSD major source threshold would be 100 or 250 tons per year (depending on the source category), and any increase in GHG emissions resulting from a physical change or change in the method of operation at a major source would trigger PSD review.

According to the Tailoring Rule, this would greatly increase the number of required permits, impose undue costs on small sources, overwhelm the resources of permitting authorities, and severely impair the functioning of the programs (75 FR 31514).

Comments will begin with Mr. Henry Graham.

MR. GRAHAM:

Good afternoon. My name is Henry Graham. I with the Louisiana Chemical Association. LCA is the trade

association representing chemical manufacturers in the state of Louisiana.

Many of our members hold Title V permits and could be impacted by the proposed rules.

LCA supports DEQ's efforts to be consistent with federal requirements and we certainly appreciate the state's efforts to maintain authorization for Title V programs, although we are concerned that there are some portions of this Tailoring Rule that, however, are controversial. And we think that the DEQ needs to make sure that it has the ability to suspend or sever portions of the proposed Tailoring Rule, if the corresponding federal rules are stayed, suspended, delayed or overturned.

We also feel that there is a possibility of some changes being alternated in the near future through either executive, legislative or judicial action.

So we would like to request that the department consider a technical amendment

to the rules to insure transition or a suspension provision.

We appreciate the opportunity to comment. We are submitting written comments for the record that will verify our oral comments.

MS. JOHNSON:

Thank you, Mr. Graham.

MR. GRAHAM:

Thank you, again.

MS. JOHNSON:

Does anyone else care to comment on this regulation?

If not, the hearing on AQ314ft is close.

Thank you for your attention and participation.

This hearing is closed.

THE HEARING CONCLUDED AT 1:36 P.M.

* * * * *

REPORTER'S PAGE

I, Lori B. Overland, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(b) of the Louisiana code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the Record

That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talk overs; that same is the proper method for a Court Reporters's transcription of proceeding, and that the dashes (--) do not indicated that words or phrases have been left out of this transcript;

That any words and/or names which could not be verified through reference material have been denoted with the phrase "(inaudible)."

_____

Lori Overland, C.C.R.

97083

CERTIFICATION

I, the undersigned reporter, do hereby certify that the above and foregoing is a true and correct transcription of the stenomask tape of the proceedings had herein, taken down by me and transcribed under my supervision, to the best of my ability and understanding, at the time and place hereinbefore noted, in the above entitled cause.

I further certify that the witness was duly sworn by me in my capacity as a Certified Court Reporter pursuant to the provisions of R.S. 37:2551 et seq. in and for the state of Louisiana; that I am not of counsel nor related to any of the counsel of any of the parties, nor in the employ of any of the parties, and that I have no interest in the outcome of this action.

I further certify that my license is in good standing as a court reporter in and for the state of Louisiana.

_____

Lori Overland, C.C.R.

97083

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

NOV 2 4 2010

Mr. Donald Trahan
Office of the Secretary
Legal Affairs Division
P.O. Box 4302
Baton Rouge, LA 70821-4302

RE: EPA Comments on Proposed AQ314ft – LAC 33:III.502(A) and 509(B)

Dear Mr. Trahan:

Thank you for providing us the opportunity to review and comment on the proposed revisions to the Louisiana title V and Prevention of Significant Deterioration (PSD) programs at Louisiana Air Code, Title 33, Part III, Sections 502(A) and 509(B), and the associated revisions to the Louisiana State Implementation Plan (SIP) and title V program as they pertain to GHGs only. The proposed rulemaking revises the Louisiana PSD and title V programs to establish the greenhouse gas-specific permitting thresholds consistent with EPA's final rule "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" published on June 3, 2010 (see 75 FR 31514).

We are supportive of the proposed rule revisions, but note that there are several significant differences between the proposed Louisiana provisions and the federal GHG Tailoring Rule provisions at 40 CFR parts 52.21 and 70.2 as outlined in our enclosed comments. These areas of difference must be corrected for the Louisiana program to implement the GHG Tailoring Rule thresholds as EPA intended.

We encourage the Louisiana Department of Environmental Quality (LDEQ) to adopt these revisions with the corrections identified in the enclosure as expeditiously as possible to implement the GHG Tailoring Rule provisions in the State of Louisiana by January 2, 2011. We would appreciate the opportunity to review the revised rulemaking language prior to adoption to ensure the revisions address our concerns and adequately implement the GHG Tailoring Rule provisions.

We appreciate the timely efforts of the LDEQ to update the PSD and title V programs and your willingness to consult EPA Region 6 throughout this process. We look forward to future collaboration with LDEQ on the implementation of the GHG Tailoring Rule. If you have any questions about the GHG Tailoring Rule, or about EPA's review of your proposed rulemaking, please feel free to contact me at 214-665-6435 or contact Ms. Adina Wiley of my staff at 214-665-2115.

Sincerely yours,

Jeff Robinson
Chief
Air Permits Section

Enclosure

cc: Mr. Bryan Johnston
Louisiana Department of Environmental Quality

Enclosure

1. The definition of *major source* at 40 CFR 70.2 states that a major source for purposes of title V is a major stationary source that directly emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation. GHGs are further identified as *subject to regulation* for purposes of title V as of July 1, 2011, at stationary sources emitting or having the potential to emit 100,000 tpy of carbon dioxide equivalent emissions (CO_2e). Therefore, for a source to become subject to title V because of GHG emissions, the source must directly emit or have the potential to emit 100 tpy or more of GHGs and emit or have the potential to emit 100,000 tpy CO_2e after July 1, 2011.

   As currently proposed, the revisions to *Major Source* at LAC 33:III.502(A) differ from the federal regulations in that they exempt GHGs from the 100 tpy mass basis for title V applicability. A source would become subject to title V solely based on directly emitting or having the potential to emit 100,000 tpy CO_2e after July 1, 2011.

2. The revisions to LAC 33:III.509(B) definition of Major Source do not completely satisfy the mass basis for PSD applicability as outlined in the definition of "subject to regulation" at 40 CFR 52.21(b)(49)(iv) and (v). Under federal PSD requirements, the 100/250 tpy mass basis continues to apply under Phase 1 and Phase 2 of the Tailoring Rule implementation.
   a) Under Phase 1 (January 2 – June 30, 2011) a new source that is major for non-GHGs that also has the potential to emit 75,000 tpy CO2e will be subject to PSD. The proposed Louisiana rules correctly provide this functionality consistent with 40 CFR 52.21(b)(49)(iv)(a).
   b) However, the proposed Louisiana rules are unable to correctly implement the remainder of the definition of "subject to regulation" at 40 CFR 52.21(b)(49)(iv)(b) and (v).
      i. For example, under Phase 1 an existing source that is major for non-GHGs will be subject to PSD permitting for GHGs if it also has a significant emission increase of 75,000 tpy CO_2e and a net emissions increase of greater than 0 tpy mass basis for GHG emissions. The proposed Louisiana revisions do not allow for the greater than 0 tpy mass basis consistent with 40 CFR 52.21(b)(49)(iv)(b).
      ii. Under Phase 2 (starting July 1, 2011), a new source can be subject to GHG PSD permitting as described above at 2(a), or the source could become subject to GHG PSD permitting with a GHG PTE of 100,000 tpy CO_2e and the 100/250 tpy major source mass basis. The proposed Louisiana revisions to do not allow for the 100/250 tpy mass basis to apply to new sources of GHGs after July 1, 2011, consistent with 40 CFR 52.21(b)(49)(v)(a).
      iii. Under Phase 2, a modification will continue to be subject to GHG PSD permitting as described above at 2(b)(i), or the modification could become

subject to GHG PSD permitting if the existing source has a PTE equal or greater than 100,000 tpy CO_2e and satisfies the 100/250 tpy mass basis and the modification results in a significant emissions increase of 75,000 tpy CO_2e and has greater than 0 tpy mass basis for GHGs. Additionally under Phase 2, an existing minor source for PSD could have a modification that has actual or potential GHG emissions equal to or greater than 100,000 tpy CO_2e and 100/250 tpy mass basis. In each of these instances the mass basis applies to the GHG emissions. The proposed Louisiana revisions do not provide that the mass basis for PSD applicability includes GHG emissions, consistent with 40 CFR 52.21(b)(49)(v)(b).

LCA
LOUISIANA CHEMICAL ASSOCIATION
DAN S. BORNÉ
PRESIDENT

November 24, 2010

Hand Delivered

Mr. Donald Trahan
Attorney Supervisor
Office of the Secretary
Legal Affairs Division
Box 4302
Baton Rouge, LA 70821-4302

Subject: Proposed DEQ Greenhouse Gas (GHG) Tailoring Rule – AQ314ft

The Louisiana Chemical Association (LCA) hereby submits the following comments concerning proposed Louisiana Department of Environmental Quality (DEQ) rules AQ314ft. LCA requests that DEQ respond to our comments prior to seeking legislative oversight approval of AQ314ft. LCA is a trade association representing 64 chemical manufacturers at more than 90 locations in the state of Louisiana. Most of our members have Title V Permits required by the Clean Air Act and would be affected by the proposed rulemaking.

LCA supports the Louisiana Department of Environmental Quality (DEQ) in adopting rules consistent with federal requirements. The proposed DEQ rules appear to be identical to federal regulations published in the June 3, 2010 Federal Register.

LCA requests that comments submitted by any of our members, the Louisiana Mid-Continent Oil & Gas Association (LMOGA) and by the Air Permitting Forum be considered as part of LCA's comments in the public record of this rulemaking. Although we applaud DEQ's efforts to maintain consistency and avoid imposing unnecessary burdens on the regulated community, we request that DEQ include provisions that would suspend or allow severability of portions of the proposed "tailoring" rule if the corresponding federal rules are stayed, suspended, delayed or overturned. We recognize the controversial nature of the federal GHG rules and the possibility of their being altered or delayed by future executive, legislative or judicial actions. Several pending legal actions could prevent the implementation of the federal rules. If this should occur, we would not want the state's adoption of similar rules to force the regulated community to comply with rules that are not required or inconsistent with the federal program.

We request that DEQ ensure that if federal application of the Prevention of Significant Deterioration (PSD) and/or Clean Air Act Title V programs to Greenhouse Gas emissions is stayed or abated, the DEQ GHG rules will automatically be limited as well. LCA also supports the position that DEQ's proposed rules should not apply minor New Source Review (NSR) permitting to GHGs. LCA is aware that carbon dioxide (CO_2) is included as a "pollutant" in the Insignificant Activities List provided in Section 501(B)(5) of the DEQ Air Quality regulations. However, the listing of CO_2 as a pollutant should not trigger minor NSR permitting. DEQ also should clarify that other GHG equivalent emissions also will not trigger minor source permitting under the proposed rules.

LCA believes that the changes requested can be made by DEQ using technical amendments that will not substantially delay this proposed rulemaking.

Your consideration of our comments would be greatly appreciated.

Sincerely,

Henry T. Graham, Jr.

Henry T. Graham, Jr.
Vice President of Environmental Affairs
General Counsel

LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION

730 NORTH BOULEVARD, BATON ROUGE, LA 70802
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November 24, 2010

Donald Trahan
Attorney Supervisor
Louisiana Department of Environmental Quality
Office of the Secretary
Legal Affairs Division
602 N. Fifth Street
Baton Rouge, Louisiana 70802

RE: Proposed Air Permitting Amendments for Greenhouse Gases - Log No AQ314ft

The Louisiana Mid-Continent Oil and Gas Association (LMOGA) appreciates the opportunity to comment on the proposed Air Permitting Amendments for Greenhouse Gases (Log No AQ314ft) that appeared in the October 20, 2010 Louisiana Register. LMOGA is an industry trade association representing individuals and companies who together produce, refine, transport and market crude oil, natural gas and petroleum products in Louisiana. LMOGA members in the production, pipeline and refining sectors are affected by this rulemaking.

Comment 1: The rule language should be identical to the federal rule.

This proposal is intended to be identical to federal regulations known as the "Tailoring Rule" (Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule) which EPA promulgated June 3, 2010, at FR 75, Part 106, Pages 31606-31607. However, AQ314ft as proposed does not adopt rule language identical to the federal rule. The differences and omissions from the federal rule language potentially result in substantive, though unintended, changes to the federal requirements. Technical amendments are required in order to render AQ314ft identical to the federal rule as intended. LMOGA strongly encourages the LDEQ to adopt rule language identical to the federal rule in order to avoid any unintended differences in the program.

Comment 2: The rule should incorporate a provision to ensure that the State rule is only effective if the federal rule is effective.

Numerous states and industry groups have appealed the Tailoring Rule and other EPA rules that collectively impose PSD permitting on stationary sources for GHGs and led EPA to adopt the Tailoring Rule. In addition, a motion to stay has been filed in the DC Circuit Court of Appeals. While the LMOGA recognizes that the LDEQ is moving forward to adopt the Tailoring Rule at

this time in response to EPA's interpretation that PSD will apply to GHGs effective January 2, 2011 and in order to avoid the imposition of PSD on very small stationary sources, it is critical that the LDEQ rule not be imposed in the event the federal rules are stayed, vacated, or withdrawn in response to the pending legal challenges. Accordingly, LMOGA requests that LDEQ adopt a provision that would stay the effectiveness of permitting requirements for GHGs in the event the federal rule is stayed, vacated or withdrawn, either all or in part.

Once again, LMOGA appreciates the opportunity to submit these comments.

Sincerely,

Richard T. Metcalf
Director of Environmental Affairs

Comments of the Air Permitting Forum on Proposed Changes to Louisiana's Prevention of Significant Deterioration Regulations to Implement EPA's Greenhouse Gas Tailoring Rule

The Air Permitting Forum (APF or Forum) submits these comments to the Louisiana Department of Environmental Quality (LDEQ) on the rulemaking proposal to address the U.S. EPA's decision to regulate greenhouse gases (GHGs) from stationary sources under the Prevention of Significant Deterioration (PSD) construction permit program and the Title V operating permit program. These proposed changes would incorporate EPA's Tailoring Rule provisions that raise the major source threshold to 100,000 tons per year (tpy) carbon dioxide equivalents (CO2e) and the PSD significance level to 75,000 tpy CO2e. The APF is a trade association that focuses on implementation of Clean Air Act permitting and other environmental requirements. Forum members operate facilities in Louisiana and therefore are affected by the proposed regulations. These comments address four issues:

(1) the need for a sunsetting provision so that Louisiana's regulations are no more stringent than federal rules should litigation challenging the rules be successful;
(2) the need to ensure minor new source review (NSR) is not applicable to GHGs;
(3) the need to ensure the regulatory language would not re-create a PSD trigger below the 100,000 ton threshold should EPA promulgate an NSPS applicable to GHGs; and
(4) the need to ensure that sources meet both the CO2e and a mass GHG emissions level before triggering PSD or Title V.

Need for a Sunsetting Provision: The Forum appreciates that LDEQ is trying to ensure that facilities in Louisiana will not become subject to permitting at a major source level of 100 tpy or 250 tpy and that modifications will not be subject to a 0 tpy significance level. At the same time, we believe that LDEQ could interpret its regulations such that only criteria pollutants can trigger PSD although pollutants "subject to regulation" would be subject to the best available control technology requirement. Since LDEQ has indicated however that it is interpreting its rules to allow GHGs to trigger PSD, it would also be appropriate for LDEQ to include in its rules a an "expiration" or "sunsetting" of the provisions regulating GHGs under the PSD and Title V program in light of the current litigation challenging EPA's decisions to regulate greenhouse gases under the Clean Air Act.

As LDEQ is aware, U.S. EPA has taken several actions that have led to the federal Tailoring Rule establishing the 100,000 ton per year CO2e threshold for major sources under PSD and Title V and the 75,000 ton per year significance level. Each of these actions is being challenged in the U.S. Court of Appeals for the D.C. Circuit. These challenges raise several issues, most important of which for this proposed rule are whether GHGs are intended to be within the term "subject to regulation" and whether GHGs can trigger the requirement to obtain a PSD permit when EPA has not even

established a NAAQS for GHGs. The validity of EPA's actions will be judged by the courts over the course of the next year. In addition, on September 15, 2010, a motion to stay the stationary source effects of the GHG rules was also filed seeking to prevent the triggering of PSD and Title V until EPA's authority can be addressed by the courts.

In light of these pending actions, it is important that the state's adoption of the EPA Tailoring Rule thresholds not put it in a position where the federal government is *not implementing* the stationary source permitting programs for GHGs but LDEQ is forced to follow its own regulations and apply these programs and . We recommend, therefore, that the DEQ include a provision in the regulations directly that conditions the application of PSD and Title V to stationary sources within the state on the continued validity of the provisions at the federal level. For example, the following language could be included at the end of the "subject to regulation" definition to ensure that the state is not implementing PSD or Title V for GHGs in such a case:

> The provisions of this rule establish specified thresholds for determining if a source is major and if an increase in emissions is significant under these rules. The determination that these rules require sources to obtain a permit for GHG emissions is contingent on the continued implementation of the federal determination that GHG emissions can trigger the requirement to obtain a permit under Part C of Title I of the federal Clean Air Act.
>
> If a court, the U.S. Environmental Protection Agency, or the President or his authorized agent, acts to stay or otherwise invalidate applicability of Part C of Title I to stationary sources of GHGs, these regulations shall not operate to require stationary source permits for such sources beyond the extent to which the court validates and authorizes implementation of the federal rules. To the extent that any court or other federal action or determination requires the permitting of any stationary source of GHG emissions at levels below the permitting thresholds set forth in this rule, the permitting thresholds in this rule shall remain in effect unless and until this rule is amended or rescinded.

This provision (or a provision like it) is especially important to the extent that EPA acts on a proposed state implementation plan revision. Under *General Motors Company v. U.S.*, 496 U.S. 530 (1990), and a new case *U.S. v. Cinergy*, Nos. 09-3344, 09-3350, 09-3351, Slip Op. (7th Cir. Oct. 12, 2010), even if a state revises its regulations, unless the EPA has actually acted to approve the SIP revision, the existing SIP regulations are enforceable. This is why EPA has stated its commitment to act quickly on these Tailoring Rule SIP revisions. If EPA does approve these state rules into the SIP quickly, however, and EPA's rules are later determined to have inappropriately imposed PSD and Title V on stationary sources of GHGs, sources in this state will be forced to comply with these rules until the state adopts a revision and EPA approves that revision. Given the current SIP backlog and EPA's desire to regulate GHGs under the Clean Air Act, it is likely that EPA action on SIP revisions to eliminate GHG regulation will take much longer than its revisions to ensure GHGs will be regulated. By including a sunsetting

provision in the regulation itself, EPA's initial action to approve regulating GHGs under this state's SIP will be self-limiting.

Such a provision will place Louisiana in the same position as a state that is delegated for PSD and is therefore implementing the federal rules. Moreover, it will prevent any later claims that eliminating GHGs from regulation under PSD in this state might constitute backsliding. Finally, we note that several other states are looking at similar provisions. For example, Colorado adopted one last month. The Colorado provision that was adopted states:

> If there is a change in federal law or the District of Columbia Circuit Court of Appeals or the United States Supreme Court directs or issues an order, which limits or renders ineffective the regulation of GHG emissions at stationary sources under the New Source Review Prevention of Significant Deterioration (PSD) or Title V provisions of the Federal Act, the regulation of GHG emissions under the corresponding programs in this Regulation Number 3 shall be limited or rendered ineffective to the same extent.

We strongly encourage the Department to ensure that if the federal application of PSD and/or Title V to GHGs is stayed or otherwise abated, the DEQ's rules will automatically be limited in the same manner.

Clarifying Minor New Source Review Is Not Applicable to GHGs: LDEQ should clarify that its rules do not apply minor NSR permitting requirements to GHGs. Under Section 501(B)(5), the regulations include CO2 as an insignificant activity pollutant. That provision states:

> 5. Insignificant Activities List. Those activities listed in the following table are approved by the permitting authority as insignificant on the basis of size, emission or production rate, or type of pollutant. By such listing, the permitting authority exempts certain sources or types of sources from the requirement to obtain a permit under this Chapter unless it is determined by the permitting authority on a site-specific basis that any such exemption is not appropriate. ...

Carbon dioxide is included in the "pollutant" list of that regulation. LDEQ should confirm that CO2 will not trigger minor NSR permitting. Similarly, LDEQ should ensure that other GHGs also will not trigger minor source permitting under the rules. LDEQ defines GHGs consistent with EPA's definition to include 6 pollutants. All of these pollutants should be excluded from minor new source review permitting requirements.

Addressing the Potential for GHGs to Be Brought into PSD or Title V Through EPA Promulgation of a New Source Performance Standard or Another Avenue: EPA is currently considering adopting new source performance standards that regulate GHGs for certain source categories. LDEQ should examine its rule to ensure that if an NSPS

regulates GHGs, the provisions of the rules will not revert to impose permitting requirements at 100 tons per year and 250 tons per year of GHGs.

Ensuring That Any Triggering Requires Both Mass Emissions Above the Statutory Thresholds and a CO2 Equivalent Emissions Above the Tailoring Thresholds: The Forum also requests that LDEQ ensure that its rules require both a mass emission level of at least 100 tons per year for listed source categories and 250 tons per year for other source categories to trigger the requirement to obtain a PSD permit when the source would not otherwise be a "major stationary source." The same should be true for Title V with the relevant threshold being 100 tons per year. As drafted, LDEQ inserts the parenthetical qualifier "except GHGs" for the major source and major stationary source definitions. There is a separate section for GHGs that speaks only to CO2e emissions. However, it is possible that a source could be major on a CO2e basis but minor in terms of its mass emissions. Therefore, the definitions of major source and major stationary source must require that both criteria be met before a source would be classified as major. EPA addressed this in its Tailoring Rule but we did not see this requirement in the LDEQ proposal.

* * * * * * * *

The Forum appreciates the opportunity to submit these comments and requests that any questions be directed to Shannon Broome, Executive Director, Air Permitting Forum at 510-985-1710 or sbroome@pacbell.net.

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LOUISIANA BUCKET BRIGADE
Clean Air. Justice. Sustainability.

November 24, 2010

Donalad Trahan
Attorney Supervisor
Office of the Secretary
Legal Affairs Division
Box 4302
Baton Rouge, LA, 70821-4302
Donald.Trahan@la.gov

Subject: Greenhouse Gas Tailoring Rule

Dear Mr. Trahan:

Because global warming poses a serious threat to Louisiana, we are writing to offer our general support for the greenhouse gas pollution control rules proposed by Department of Environmental Quality (DEQ).

DEQ's proposed greenhouse gas-related amendments to its air regulations will help cut pollution and support the growing clean energy economy without burdening small businesses. We need to start now: As we have sadly learned over the past years, Louisiana's coast and communities are particularly vulnerable to the risings seas and severe storms which global warming is driving. Sweltering summer days also contribute to the conditions that form ozone smog, which causes asthma and other respiratory problems. Louisiana's future depends upon controlling global warming.

DEQ's approach incorporates the terms of the U.S. EPA's Tailoring Rule into Louisiana law. This tailoring approach is reasonable and effective because it gradually phases in global warming pollution controls by focusing only on the massive industrial facilities which emit the lion's share of pollution and which already have substantial expertise navigating the permitting process. At first, it will only impose permit requirements for those sources already required to get permits based on other pollutants, and only if such new and old modified sources will emit more than 75,000 tons of global warming pollution. At a later date, sources will have to apply based on their greenhouse gas emissions alone, but new sources will have the benefit of a significantly higher threshold of 100,000 tons. Modified sources will have to apply if their total greenhouse gas emissions are over 100,000 tons annually and the modification would increase those emissions by 75,000 tons annually.

These large pollution sources have the capacity to quickly and efficiently reduce their emissions. The Clean Air Act's "best available control technology" requirement is designed to take "energy, environmental, and economic impacts" into account and to "insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources." See 42 U.S.C. §§ 7470(3); 7479(3). Companies will be able to economically comply with this requirement by installing more efficient boilers, fixing faulty equipment, and using cleaner fuels – processes which create jobs.

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Unsurprisingly, then, the Clean Air Act has a long history of successfully controlling pollution while promoting economic growth. The air in our nation's cities is substantially cleaner than in 1990, when the Clean Air Act Amendments gave the Act its modern form, while the economy has continued to grow. Data from 2005-2007, for instance, show ozone air quality improved in 99 of the 104 areas suffering from ozone smog levels worse than national air quality standards. Most of the country is now meeting air quality targets set years ago for carbon monoxide, nitrogen oxides and sulfur dioxide. Lead levels in ambient air are 91% lower than in 1980, protecting children from brain damage from that toxic pollutant. There is every reason to think global warming pollution controls will be equally successful.

We therefore strongly support DEQ's decision to adopt the Tailoring Rule thresholds to begin and begin controlling global warming pollution in Louisiana. That course will help to control global warming pollution, promote clean air, and protect Louisiana and its economy.

Sincerely,

Jordan Macha
Field Organizer
Sierra Club

Anne Rolfes
Founding Director
Louisiana Bucket Brigade

Comment Summary Response & Concise Statement –
Greenhouse Gas (GHG) Tailoring Rule
LAC 33:III.502.A and 509.B, Log Number AQ314ft

COMMENT 1: The commenter supports the LDEQ in adopting rules consistent with federal requirements.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 1: The department appreciates the support.

COMMENT 2: The commenter request that LDEQ GHG rules be automatically limited if federal application of the Prevention of Significant Deterioration (PSA) and/or Clean Air Act Title V programs to Greenhouse Gas emissions are stayed, delayed, overturned, or abated. If this should occur, the commenter would not want the state's adoption of similar rules to force the regulated community to comply with the rules that are inconsistent with the federal program.

The department agrees with the comment; no arguments are necessary.

RESPONSE 2: The following provision will be added to LAC 33:III.501:

> If there is a change in federal law or the United States Court of Appeals for the District of Columbia Circuit or the United States Supreme Court issues an order which limits or renders ineffective the regulation of greenhouse gases from stationary sources under Part C of Title I (Prevention of Significant Deterioration of Air Quality) or Title V (Permits) of the Clean Air Act, the regulation of greenhouse gases under the corresponding programs in this Chapter shall be limited or rendered ineffective to the same extent.

COMMENT 3: The commenter supports the position that LDEQ's proposed rules should not apply minor New Source Review (NSR) permitting to GHGs.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 3: Minor NSR permitting is required by Section 110(a)(2)(C) of the Clean Air Act. This provision requires the "implementation plan submitted by a State" to include a program to, among other things, provide for the:

> "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved ..."

Because there is no National Ambient Air Quality Standard (NAAQS) for GHGs (or any of the six compounds or classes of compounds that comprise GHGs), a minor NSR program is not required.

COMMENT 4: The commenter believes LDEQ's proposed rules appear to be identical to the federal regulations published in the June 3, 2010, *Federal Register*.

FOR: LDEQ's GHG Tailoring Rule should be identical to the federal regulations published in the June 3, 2010, *Federal Register*.

AGAINST: LDEQ does not propose to adopt EPA's definition of "subject to regulation."

RESPONSE 4: EPA's definition of "subject to regulation" reads, in relevant part:

> [F]or any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity.

See 40 CFR 51.166(b)(48), 40 CFR 52.21(b)(49), 40 CFR 70.2, and 40 CFR 71.2.

LDEQ does not propose to adopt EPA's definition of this term. LDEQ is concerned that if EPA promulgates a "nationally-applicable regulation" requiring "actual control" of a given pollutant, that pollutant would immediately become a "regulated

NSR pollutant" under the Prevention of Significant Deterioration (PSD) program, even if the regulation does not apply to stationary sources. Further, in the absence of a duly-promulgated PSD significance level, any increase of the pollutant in question at a major stationary source could trigger PSD review (see LAC 33:III.509.B.*Significant*.b and corresponding federal regulations).

COMMENT 5: The commenter believes that clarification of minor NSR permitting triggers can be done by LDEQ using technical amendments that will not result in a substantial delay in the proposed rule.

FOR: LDEQ should clarify that regulation of GHGs does not trigger minor source permitting.

AGAINST: Because there is no NAAQS for GHGs, Section 110(a)(2)(C) of the Clean Air Act does not require a minor NSR permitting program.

RESPONSE 5: The commenter is concerned that listing of CO_2 as a "pollutant" (under LAC 33:III.501.B.5, Item C.3) may trigger minor NSR permitting. See LDEQ Response to Comment No. 3.

COMMENT 6: The commenter states that technical amendments to the proposed rule are required in order to render AQ314ft identical to the federal rule so that no unintended differences occur in the program.

The department agrees with the comment; no arguments are necessary.

RESPONSE 6: LDEQ will reconcile differences between the proposed rule and the federal "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (75 FR 31514) via technical amendments.

COMMENT 7: The commenter notes that there are several differences between the Louisiana proposed rule revisions and the federal GHG Tailoring rule provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 7: LDEQ will reconcile differences between the proposed rule and the federal "Prevention of Significant Deterioration and Title V

Greenhouse Gas Tailoring Rule" (75 FR 31514) via technical amendments.

COMMENT 8: The commenter encourages LDEQ to adopt the changes that the EPA has intended for the specific thresholds.

The department agrees with the comment; no arguments are necessary.

RESPONSE 8: LDEQ will reconcile differences between the proposed rule and the federal "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (75 FR 31514) via technical amendments.

COMMENT 9: The commenter would appreciate the opportunity to review the LDEQ revisions before the language in the rule is adopted to ensure their concerns are adequately addressed.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 9: LDEQ will share a draft version of the final rule with EPA before it is adopted.

COMMENT 10: The commenter believes LDEQ should examine its rule to ensure that if an NSPS regulates GHGs, the provisions of the rules will not revert to impose permitting requirements at 100 tons per year and 250 tons per year of GHGs.

FOR: LDEQ's rules should not impose permitting requirements on GHGs at the 100 or 250 ton per year thresholds should EPA regulate GHG under an NSPS.

AGAINST: AQ314ft ties the 100 and 250 ton per year thresholds to the stationary source's potential emissions of GHGs.

RESPONSE 10: Per the definitions of "major source" in LAC 33:III.502.A and "major stationary source" in LAC 33:III.509.B, whether a stationary source is "major" is dependent on its potential emissions of GHGs (both on a mass basis and on a CO_2e basis).

Any future federal standard promulgated pursuant to Section 111 of the Clean Air Act (i.e., NSPS) regulating GHGs would not alter the established permitting thresholds.

COMMENT 11: The commenter requests that LDEQ ensure that its rules require both a mass emission level of at least 100 tons per year for listed source categories and 250 tons per year for other source categories to trigger the requirement to obtain a PSD permit when the source would not otherwise be a "major stationary source." The same should be true for Title V with the relevant threshold being 100 tons per year.

The department agrees with the comment; no arguments are necessary.

RESPONSE 11: LDEQ will amend the rule to specify that GHG emissions from a stationary source must equal or exceed 100 or 250 tons per year (depending on the source category) on a mass basis (i.e., no global warming potentials applied) and 100,000 tons per year on a CO_2e basis in order for it to be a "major stationary source" under LAC 33:III.509 – Prevention of Significant Deterioration. LDEQ will also specify that GHG emissions from a stationary source must equal or exceed 100 tons per year on a mass basis and 100,000 tons per year on a CO_2e basis in order for it to be a "major source" with respect to the Part 70 Operating Permits Program.

COMMENT 12: The commenter believes LDEQ's proposed greenhouse gas-related amendments to its air regulations will help cut pollution and support the growing clean energy economy without burdening small businesses.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 12: AQ314ft is being promulgated to ensure Louisiana is on a level playing field nationally with respect to the permitting of greenhouse gas emissions while this matter is being litigated. Notwithstanding this rulemaking, LDEQ reiterates its position that global climate change is an issue that is best addressed through comprehensive federal legislation, rather than unilateral agency regulation, and emphasizes that it does not support the manner through which EPA has chosen to regulate greenhouse gases under the Clean Air Act.

Comment Summary Response & Concise Statement –
Greenhouse Gas (GHG) Tailoring Rule
LAC 33:III.502.A and 509.B, Log Number AQ314ft

COMMENT #	SUGGESTED BY
1 – 7, 10, 11	Louisiana Chemical Association
1 - 3, 6, 7	Louisiana Mid-Continent Oil and Gas Association
6 - 9, 11	EPA - Region 6
1 - 3, 10, 11	Air Permitting Forum
12	Sierra Club/Louisiana Bucket Brigade

12 Comments
5 Commenters

* indicates a fast-track regulation

Appendix B

Revisions to the:
Prevention of Significant Deterioration
and
Title V Greenhouse Gas Tailoring Rule

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§502. Definitions

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

* * *

CO_2 Equivalent Emissions (CO_2e)—the emitted amount of greenhouse gases (GHGs) computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential, published in Table A-1 to Subpart A of 40 CFR Part 98—Global Warming Potentials, and summing the resultant value for each.

* * *

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Major Source—for the purposes of determining the applicability of 40 CFR Part 70 or of LAC 33:III.507, any stationary source or any group of stationary sources that are located on one or more contiguous or adjacent properties, that are under common control of the same person (or persons under common control), and that are described in Subparagraph a, b, ~~or~~c, or d of this definition:

a.i. - ii. …

b. any stationary source that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant (except for GHGs) excluding any air pollutant regulated solely under Section 112(r) of the Clean Air Act. Fugitive emissions of a stationary source shall be considered in determining whether it is a major source under this Subparagraph:

i. - ii. …

c. any major stationary source as defined in Part D (Nonattainment) of Title I of the Clean Air Act, including any source defined as a major stationary source under LAC 33:III.504.K.~~;~~

d. as of July 1, 2011, any stationary source that directly emits or has the potential to emit 100,000 tpy CO_2e.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:**.

§509. Prevention of Significant Deterioration

A.1 - 5. ...

B. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

* * *

CO_2 Equivalent Emissions (CO_2e)—the emitted amount of greenhouse gases (GHGs) computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to Subpart A of 40 CFR, Part 98—Global Warming Potentials, and summing the resultant value for each.

* * *

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

* * *

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant (except for GHGs) subject to regulation under this Section;

b. for stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant (except for GHGs) subject to regulation under this Section; ~~or~~

c. as of July 1, 2011, any stationary source which emits, or has the potential to emit, at least 100,000 tons per year CO_2e; or

~~e~~d. any physical change that would occur at a source not otherwise qualifying as a major stationary source under Subparagraphs a, ~~and~~b, or c of this definition if the change would constitute a major source by itself;

~~d~~e. a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

~~e~~f. the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a *major stationary source*, unless the source is listed in Table A of this definition or, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

* * *

Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

Pollutant	Emission Rate
Municipal waste combustor organics[1]	0.0000035 tpy
Municipal waste combustor metals[2]	15 tpy
Municipal waste combustor acid gases[3]	40 tpy
Municipal solid waste landfills emissions[4]	50 tpy
GHGs (as CO_2e)[5]	75,000 tpy

[1]Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.
[2]Measured as particulate matter.
[3]Measured as sulfur dioxide and hydrogen chloride.
[4]Measured as nonmethane organic compounds.
[5]Effective January 2, 2011.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:**.

List of Technical Amendments
AQ314ft
Greenhouse Gas (GHG) Tailoring Rule
(LAC 33:III.501.C, 502.A, & 509.B)

	Citation	Amendment
1.	§501.C.14	new paragraph
2.	§502.A.*Major Source*.d	added text
3.	§509.B.*Major Stationary Source*.c	added text
4.	§509.B.*Significant*.a (GHGs)	added text
5.	§509.B.*Significant*.Note 5	changed text
6.	§509.B.*Significant*.d	new subparagraph

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§501. Definitions

A. - C.13. ...

14. If there is a change in federal law or the United States Court of Appeals for the District of Columbia Circuit or the United States Supreme Court issues an order which limits or renders ineffective the regulation of greenhouse gases from stationary sources under Part C of Title I (Prevention of Significant Deterioration of Air Quality) or Title V (Permits) of the Clean Air Act, the regulation of greenhouse gases under the corresponding programs in this Chapter shall be limited or rendered ineffective to the same extent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:**.

§502. Definitions

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

* * *

CO_2 Equivalent Emissions (CO_2e)—the emitted amount of *greenhouse gases (GHGs)* computed by multiplying the mass amount of emissions for each of the six *GHGs* by its associated global warming potential, published in Table A-1 to Subpart A of 40 CFR Part 98—

Global Warming Potentials, and summing the resultant value for each. (See *greenhouse gases (GHGs).*)

* * *

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Major Source—for the purposes of determining the applicability of 40 CFR Part 70 or of LAC 33:III.507, any stationary source or any group of stationary sources that are located on one or more contiguous or adjacent properties, that are under common control of the same person (or persons under common control), and that are described in Subparagraph a, b, ~~or~~c, or d of this definition:

a. - a.ii. …

b. any stationary source that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant (except for GHGs) excluding any air pollutant regulated solely under Section 112(r) of the Clean Air Act. Fugitive emissions of a stationary source shall be considered in determining whether it is a major source under this Subparagraph:

i. - ii. …

c. any major stationary source as defined in Part D (Nonattainment) of Title I of the Clean Air Act, including any source defined as a major stationary source under LAC 33:III.504.K~~.~~;

d. as of July 1, 2011, any stationary source that directly emits or has the potential to emit 100 tpy or more of *GHGs* on a mass basis (i.e., no global warming potentials applied) and 100,000 tpy or more of CO_2e.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2553 (November 2010), LR 37:**.

§509. Prevention of Significant Deterioration

A. - A.5. …

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

* * *

CO_2 Equivalent Emissions (CO_2e)—the emitted amount of greenhouse gases (GHGs) computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to Subpart A of 40 CFR, Part 98—Global Warming Potentials, and summing the resultant value for each.

* * *

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

* * *

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant (except for GHGs) subject to regulation under this Section;

b. for stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant (except for GHGs) subject to regulation under this Section; ~~or~~

c. as of July 1, 2011, any stationary source listed in Table A of this definition which emits, or has the potential to emit, ~~at least~~ 100 tpy or more of *GHGs* on a mass basis (i.e., no global warming potentials applied) and 100,000 tons per year or more of CO_2e; or any stationary source not listed in Table A that emits, or has the potential to emit, 250 tpy or more of *GHGs* on a mass basis and 100,000 tons per year or more of CO_2e; or

~~e~~d. any physical change that would occur at a source not otherwise qualifying as a major stationary source under Subparagraphs a, ~~and~~b, or c of this definition if the change would constitute a major source by itself;

~~d~~e. a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

~~e~~f. the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a *major stationary source*, unless the source is listed in Table A of this definition or, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

* * *

Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics[1]	0.0000035 tpy
Municipal waste combustor metals[2]	15 tpy
Municipal waste combustor acid gases[3]	40 tpy
Municipal solid waste landfills emissions[4]	50 tpy
GHGs and *GHGs* ~~(as CO_2e)~~	0 tpy and 75,000 tpy, respectively[5]

Pollutant	Emission Rate
[1]Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans. [2]Measured as particulate matter. [3]Measured as sulfur dioxide and hydrogen chloride. [4]Measured as nonmethane organic compounds. [5]~~Effective January 2, 2011.~~ Both of the following conditions must be met: (1) the net emissions increase of *GHGs* calculated as the sum of the six GHGs on a mass basis (i.e., no global warming potentials applied) equals or exceeds 0 tpy; and (2) the net emissions increase of *GHGs* calculated as the sum of the six GHGs on a CO_2e basis (i.e., global warming potentials applied) equals or exceeds 75,000 tpy CO_2e.	

b. …

c. notwithstanding Subparagraph a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1μg/m^3 (24-hour average)~~.~~;

d. notwithstanding Subparagraph a of this definition, between January 2, 2011, and June 30, 2011, the pollutant *GHGs* is "subject to regulation" only if the stationary source is (1) a new major stationary source for a regulated NSR pollutant that is not *GHGs* and also will emit or have the potential to emit *GHGs* in a significant amount; or (2) an existing major stationary source for a regulated NSR pollutant that is not *GHGs* and also will have a significant net emissions increase of both GHGs and another regulated NSR pollutant.

* * *

C. - AA.15.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:**.

Table 1. Louisiana Air Emission Permit General Conditions
all applicable requirements, including release reporting requirements in LAC 33:I.Chapter 39.
XVIII. - XX. ..

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:660 (April 2009), amended LR 37:1146 (April 2011).

Chapter 21. Control of Emission of Organic Compounds

Subchapter F. Gasoline Handling

§2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities

A. Definitions. Terms used in this Section are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined as follows.

* * *

Independent Small Marketer of Gasoline (ISBM)—a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under this Section, unless such person:

a. is a refiner; or

b. controls, is controlled by, or is under common control with, a refiner; or

c. is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under a common control with, a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person); or

d. receives less than 50 percent of his annual income from refining or marketing of gasoline. The term *refiner* shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. Control of a corporation means ownership of more than 50 percent of its stock.

* * *

Small Business Stationary Source—a stationary source that:

a. is owned or operated by a person that employs 100 or fewer individuals;

b. is a small business concern as defined in the Small Business Act;

c. is not a major stationary source;

d. does not emit 50 tons or more per year of any criteria or toxic air pollutant; and

e. emits less than 75 tons per year of all criteria or toxic air pollutants.

* * *

B. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:1682 (December 1997), LR 24:25 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 29:558 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007), LR 34:1890 (September 2008), LR 34:2397 (November 2008), LR 37:1147 (April 2011).

Herman Robinson, CPM
Executive Counsel

1104#013

RULE

Department of Environmental Quality
Office of the Secretary

Greenhouse Gas (GHG) Tailoring
(LAC 33:III.502 and 509)(AQ314ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.502.A and 509.B (AQ314ft).

This Rule is identical to federal regulations found in June 3, 2010, FR 75, Part 106, pages 31606-31607, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

On June 3, 2010, the Environmental Protection Agency (EPA) promulgated a Rule entitled "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (Tailoring Rule) (75 FR 31514). The final Rule establishes a separate major source threshold and Prevention of Significant Deterioration (PSD) significance level for greenhouse gases (GHGs) in the form of carbon dioxide equivalents (CO2e). This action will amend LAC 33:III.502.A and 509.B to adopt the federal thresholds.

On April 2, 2010, EPA published a final Rule entitled "Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs" (75 FR 17004). Under the terms of this action, GHGs become "subject to regulation" and Title V and PSD program requirements begin to apply on January 2, 2011.

LAC 33:III.509.B currently defines "major stationary source" and "significant," in relevant part, as follows:

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under this Section;

b. or stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under this Section;

* * *

Significant—

* * *

b. in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that

Subparagraph a of this definition does not list, any emissions rate;

Consequently, in the absence of thresholds specifically tailored to GHGs, the Title V and PSD major source threshold would be 100 or 250 tons per year (depending on the source category), and any increase in GHG emissions resulting from a physical change or change in the method of operation at a major source would trigger PSD review.

According to the Tailoring Rule, this would greatly increase the number of required permits, impose undue costs on small sources, overwhelm the resources of permitting authorities, and severely impair the functioning of the programs (75 FR 31514). The basis and rationale for this Rule is to adopt the federal major stationary source threshold and PSD significance level for GHGs. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§501. Definitions

A. - C.13. ...

14. If there is a change in federal law or the United States Court of Appeals for the District of Columbia Circuit or the United States Supreme Court issues an order which limits or renders ineffective the regulation of greenhouse gases from stationary sources under Part C of Title I (Prevention of Significant Deterioration of Air Quality) or Title V (Permits) of the Clean Air Act, the regulation of greenhouse gases under the corresponding programs in this Chapter shall be limited or rendered ineffective to the same extent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:1148 (April 2011).

§502. Definitions

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

* * *

CO_2 Equivalent Emissions (CO_2e)— the emitted amount of *greenhouse gases (GHGs)* computed by multiplying the mass amount of emissions for each of the six *GHGs* by its associated global warming potential, published in Table A-1 to Subpart A of 40 CFR Part 98—Global Warming Potentials, and summing the resultant value for each. (See *greenhouse gases (GHGs)*.)

* * *

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride

Major Source—for the purposes of determining the applicability of 40 CFR Part 70 or of LAC 33:III.507, any stationary source or any group of stationary sources that are located on one or more contiguous or adjacent properties, that are under common control of the same person (or persons under common control), and that are described in Subparagraph a, b, or c, d of this definition:

a. - a.ii. ...

b. any stationary source that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant (except for GHGs) excluding any air pollutant regulated solely under Section 112(r) of the Clean Air Act. Fugitive emissions of a stationary source shall be considered in determining whether it is a major source under this Subparagraph:

i. - ii. ...

c. any major stationary source as defined in Part D (Nonattainment) of Title I of the Clean Air Act, including any source defined as a major stationary source under LAC 33:III.504.K;

d. as of July 1, 2011, any stationary source that directly emits or has the potential to emit 100 tpy or more of *GHGs* on a mass basis (i.e., no global warming potentials applied) and 100,000 tpy or more of *CO_2e*.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 37:1148 (April 2011).

§509. Prevention of Significant Deterioration

A. - A.5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

* * *

CO_2 Equivalent Emissions (CO_2e)—the emitted amount of greenhouse gases (GHGs) computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to Subpart A of 40 CFR, Part 98—Global Warming Potentials, and summing the resultant value for each.

* * *

Greenhouse Gases (GHGs)—an air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide,

nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

* * *

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant (except for GHGs) subject to regulation under this Section;

b. for stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant (except for GHGs) subject to regulation under this Section;

c. as of July 1, 2011, any stationary source listed in Table A of this definition which emits, or has the potential to emit, 100 tpy or more of *GHGs* on a mass basis (i.e., no global warming potentials applied) and 100,000 tons per year or more of *CO2e*; or any stationary source not listed in Table A that emits, or has the potential to emit, 250 tpy or more of *GHGs* on a mass basis and 100,000 tons per year or more of *CO2e*; or

d. any physical change that would occur at a source not otherwise qualifying as a major stationary source under Subparagraphs a, b, or c of this definition if the change would constitute a major source by itself;

e. a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

f. the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a *major stationary source*, unless the source is listed in Table A of this definition or, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

* * *

Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates.

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics[1]	0.0000035 tpy
Municipal waste combustor metals[2]	15 tpy
Municipal waste combustor acid gases[3]	40 tpy
Municipal solid waste landfills emissions[4]	50 tpy
GHGs and *GHGs* as CO_2e[5]	0 tpy and75,000 tpy, respectively[5]

[1]Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.
[2]Measured as particulate matter.
[3]Measured as sulfur dioxide and hydrogen chloride.
[4]Measured as nonmethane organic compounds.
[5]Both of the following conditions must be met: (1) the net emissions increase of GHGs calculated as the sum of the six *GHGs* on a mass basis (i.e., no global warming potentials applied) equals or exceeds 0 tpy; and (2) the net emissions increase of *GHGs* calculated as the sum of the six GHGs on a CO2e basis (i.e., global warming potentials applied) equals or exceeds 75,000 tpy CO2e.

b. ...

c. notwithstanding Subparagraph a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1 g/m^3 (24-hour average);

d. notwithstanding Subparagraph a of this definition, between January 2, 2011, and June 30, 2011, the pollutant *GHGs* is "subject to regulation" only if the stationary source is:

i. a new major stationary source for a regulated NSR pollutant that is not *GHGs* and also will emit or have the potential to emit *GHGs* in a significant amount; or

ii. an existing major stationary source for a regulated NSR pollutant that is not *GHGs* and also will have a significant net emissions increase of both GHGs and another regulated NSR pollutant.

* * *

C. - AA.15.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 37:1148 (April 2011).

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